

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ALAN KRESS, BILLY FORD, ERIC)	
STAGGS, RANDY CARR, on their)	
own behalf and on behalf of a class)	
of those similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	CASE NO. 1:08-cv-0431-DFH-DML
)	
CCA OF TENNESSEE, LLC d/b/a)	
CORRECTIONS CORPORATION OF)	
AMERICA, WARDEN JEFF CONWAY,)	
NEIL PROBST, TIMOTHY LITTLE,)	
VIRGINIA LEE, and MARION COUNTY)	
SHERIFF FRANK ANDERSON,)	
)	
Defendants.)	

ENTRY ON PLAINTIFFS' MOTION TO RECONSIDER OR CLARIFY

On July 9, 2008, the plaintiffs moved to certify two questions to the Indiana Supreme Court. The court denied the motion. See *Kress v. CCA of Tennessee, LLC*, 2008 WL 4627828 (S. D. Ind. Oct. 17, 2008); Dkt. 43. Now the plaintiffs ask that the court reconsider and/or clarify its denial, asserting that language in the court's entry amounts to "a decision allowing CCA to avoid complying with the law based on its proffered private cause of action theory" and will "render futile not only jail regulations relating to grievance procedures, but also many federal and state laws governing the provision of medical services, medical privacy, and a host of other issues Plaintiffs have alleged that Defendant CCA regularly violates." Pl. Mot. ¶ 4.

The motion at issue was a motion to certify. The merits of the plaintiffs' case, as the court explained on pages 6 and 7 of its Entry, were not under consideration. See 2008 WL 4627828, *3; Dkt. 43 at 6-7. The only issue then being addressed was whether certification of the questions the plaintiffs presented was appropriate. In resolving that extremely limited issue, the court's primary consideration was the level of certainty in the relevant law. See *State Farm Mut. Auto. Ins. Co. v. Pate*, 275 F.3d 666, 671 (7th Cir. 2001). As the court explained, although the plaintiffs clearly believe that the line of cases cited by the court will be distinguishable *on the merits*, they failed to demonstrate a degree of uncertainty *in the law* sufficient for this court to take the unusual step of sending the questions presented to the Indiana Supreme Court for resolution, particularly because the plaintiffs have presented nearly identical issues to this court for resolution by way of their complaint. The plaintiffs' motion ultimately was denied because the questions they presented did not approach the standard required for certification and because, in attempting to present identical questions to both this court and the Indiana Supreme Court, denial was appropriate in order to avoid wasting judicial resources.

Although their motion to certify was denied, the merits of plaintiffs' case have not been decided. The plaintiffs suggest that the court's decision on their motion to certify will be taken to have precedential effect. The Seventh Circuit has often said that district court decisions are not binding precedent. *E.g., TMF Tool*

Co. v. Muller, 913 F.2d 1185, 1191 (7th Cir. 1990); *United States v. Articles of Drug Consisting of 203 Paper Bags*, 818 F.2d 569, 572 (7th Cir. 1987); *Colby v. J.C. Penney Co.*, 811 F.2d 1119, 1124 (7th Cir. 1987). This court's decision might have persuasive value, but for future motions to certify. Because the court's decision was not on the merits, the court is not persuaded by the plaintiffs' concern that the court's entry leaves the defendants free to adopt a wide range of illegal rules and regulations. Pl. Mot. ¶ 8. The defendants are still bound by the law. This court will resolve the merits when those issues are ripe for adjudication. The plaintiffs' motion to reconsider or clarify the Entry on their motion to certify is denied.

So ordered.

Date: November 14, 2008



DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

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